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23 UNITED STATES DISTRICT COURT

24 FOR THE NORTHERN DISTRICT OF CALIFORNIA

25 OAKLAND DIVISION

26 EPIC GAMES, INC.,
27 Plaintiff, Counter-defendant

v.
28 APPLE INC.,
Defendant, Counterclaimant

IN RE APPLE IPHONE ANTITRUST
LITIGATION

DONALD R. CAMERON, *et al.*,
Plaintiffs

v.
APPLE INC.,
Defendant.

Case No. 4:20-cv-05640-YGR-TSH
Case No. 4:11-cv-06714-YGR-TSH
Case No. 4:19-cv-03074-YGR-TSH

**DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO FILE THE
JOINT DISCOVERY LETTER BRIEF
UNDER SEAL**

Hon. Yvonne Gonzalez Rogers
Hon. Thomas S. Hixson

1 Apple Inc. (“Apple”) brings this administrative motion under Civil Local Rules 7-11(a) and 79-
 2 5(d)-(e) for an order granting Apple leave to file under seal the Joint Discovery Letter Brief Regarding
 3 Discovery from Non-Party Samsung Electronics America, Inc. (the “Joint Discovery Letter Brief”).

4 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party
 5 “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret or
 6 otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). Under this standard, a party seeking
 7 to seal a document generally must overcome the “strong presumption in favor of access” that applies
 8 to court documents other than those that are traditionally kept secret. *Kamakana v. City & Cnty. of*
 9 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). However, the “public has less of a
 10 need for access to court records attached only to non-dispositive motions because those documents are
 11 often ‘unrelated, or only tangentially related to the underlying cause of action.’” *Id.* at 1179 (citations
 12 omitted). Instead, a “‘good cause’ showing under Rule 26(c) [of the Federal Rules of Civil Procedure]
 13 will suffice to keep sealed records attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA*
 14 *Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. Jun. 17, 2013).
 15 A party seeking to seal such material must make a “particularized showing of good cause with respect
 16 to any individual document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187
 17 F.3d 1096, 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-
 18 5(b).

19 Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party seeks to file
 20 information designated as confidential by an opposing party or a non-party. This Administrative
 21 Motion is based on Plaintiff and Counter-Defendant Epic Games, Inc.’s (“Epic’s”) designation of
 22 information in the Joint Discovery Letter Brief as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
 23 – ATTORNEYS’ EYES ONLY” under the protective orders entered in the related above-captioned
 24 cases. Apple does not believe that the Joint Discovery Letter Brief meets the standard for sealing, but
 25 is filing it under seal as a courtesy to Epic and Samsung. Pursuant to subsection (e)(1) of Local Rule
 26 79-5, Epic has four days to file a declaration establishing that the material is “sealable” (as defined in
 27 Local Rule 79-5(b)).

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2 Dated: January 19, 2021

Respectfully submitted,

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5 GIBSON, DUNN & CRUTCHER LLP

6
7 By: /s/ Jason Lo
8 Jason C. Lo

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10 Attorneys for Defendant Apple Inc.

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